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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,763	02/04/2004	Scott Wadsworth	WADS101	5705
7590	06/27/2007		EXAMINER	
FRANK J. DYKAS DYKAS, SHAVER & NIPPER, LLP PO BOX 877 BOISE, ID 83701-0877			NEAL, TIMOTHY J	
			ART UNIT	PAPER NUMBER
			3731	
			MAIL DATE	
			06/27/2007	DELIVERY MODE
				PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/772,763	WADSWORTH ET AL.
	Examiner	Art Unit
	Timothy J. Neal	3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 13 April 2007.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-4,6,8-15,17 and 19 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-4,6,8-15,17 and 19 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date _____.

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
 5) Notice of Informal Patent Application
 6) Other: _____.

DETAILED ACTION

This action is in response to the amendments filed on 4/13/2007.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6, 8-13, 17, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Teitelbaum et al. (US 4,572,179).

Teitelbaum discloses:

1. A system for castrating animals comprising: an endless loop of resiliently stretchable material having a desired thickness and size (Item 100); and a device for stretching and placing said loop about a scrotal sac, said device having a pair of jaws configured to engage a portion of said endless loop (Items 35 and 45), said jaws further pivotally connected to a base portion (Item 51), said base portion configured for slideable engagement along a holding rail (Item 65) said holding rail also having a portion configured to engage a portion of said endless loop at one end (Item 66) and a handle for grasping at the other end (Item 42), said device further comprising a lever (Item 32)

connected to said base portion by a pivot connection (Item 64) whereby said lever moves to open and close said jaws.

10. A device for stretching rubber bands such as those used in removing body parts by constricting blood flow, said device comprised of a pair of jaws (Items 35 and 45) configured to engage a portion of said endless loop, said jaws further pivotally connected to a base portion (Item 51), said base portion configured for slideable engagement along a holding rail (Item 65) said holding rail also having a portion configured to engage a portion of said endless loop (Item 65) and a portion connected to a grasping handle (Item 42), and an articulating device (Item 32) configured to move said base portion so as to manipulate said jaws, so as to engage and stretch said endless loop.

The reference also discloses the limitations of claims 2, 3, 8, 9, 11-13, and 19 (see Fig 6).

Teitelbaum does not disclose the perpendicular motion of the lever with respect to the jaws. Teitelbaum's jaws move in the same plane as the jaws. Pfeninger (Figures 1 and 2), Wadsworth (46), and Warren (figures 1-4) all disclose devices in which the motion of the levers is perpendicular to the motion of the jaws. Wadsworth in particular discloses a compound lever that operates in a direction perpendicular to the jaws. Although the lever is used to pull back on of the three prongs and not to expand the jaws, the Examiner considers the reference to teach using a lever in a perpendicular

arrangement to the jaws. This allows for one person to operate the tool quickly and efficiently. The other references show general tools with jaw mechanisms that operate in a perpendicular direction to the activating levers. These support the Examiner's contention that modifying the Teitelbaum reference's lever to be perpendicular to the jaws would have been obvious. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Teitelbaum's lever to be perpendicular to the jaws. Such a modification would allow for one person to operate the device quickly and efficiently by decreasing the force required to operate the tool.

Teitelbaum does not disclose the brace arm for the lever. However, the Examiner considers it to be well known in the art to add support to a lever in the form of a brace arm. Such a modification provides the advantage of supporting the lever so that it may functionally provide mechanical advantage to the device. Therefore, it would have been obvious to a person having ordinary skill in the art to modify Teitelbaum's lever and handle configuration to include a brace arm for the advantage stated above.

Allowable Subject Matter

Claims 14 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: the Teitelbaum reference gives no reason or indication that spacer bars as

recited in the above claims would provide any advantage or even allow the device to work as disclosed. Therefore, the Examiner does not consider it obvious to combine the spacer bars of Malecki et al. (US 5,885,590) cited in a prior action with the Teitelbaum reference. Furthermore, the Malecki reference gives no motivation that would lead one of ordinary skill in the art to modify Teitelbaum to include the spacer bars.

Response to Arguments

Applicant's arguments with respect to claims 1, 10, and depending claims have been considered but are moot in view of the new ground(s) of rejection.

The Examiner notes that in the interview with Stephen Nipper on 11/07/2006 there was no agreement that would place the entire application in condition for allowance. The Examiner did suggest language that initially appeared to place claim 1 in condition for allowance over the previously cited art. However, during the Examiner's search for claim 10, new art was found that the Examiner considers to render the amended claims obvious.

The USC 112 rejections have been removed.

The Examiner agrees that the Teitelbaum reference does not disclose the lever operating in a direction perpendicular to the jaws. However, there are multiple references disclosing tools using this motion to manipulate jaws. Therefore, the Examiner considers this modification to be within the purview of one having ordinary skill in the art and to provide a mechanical advantage.

Also noted is Weisenburger (US 4,156,959). This reference is very similar to the applicant's invention specifically claim 10. Claim 10 does not claim an endless loop. Weisenburger is another reference with perpendicular jaw and lever motion. The spacers of claims 14 and 15 are shown as items 7 and 8. Weisenburger does not exactly disclose a holding rail with a post or extension for engaging an endless loop. The Examiner notes this because claims 14 and 15 have been indicated as allowable subject matter. These claims as currently written are not as clearly allowable over the prior art as the Examiner originally thought. In an effort to avoid an additional Non-Final Action, the Examiner is presenting this reference to put the Applicant on notice of a relevant piece of art. Any additional amendments should consider Weisenburger.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Weisenburger (US 4,156,959) as stated above.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

Art Unit: 3731

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy J. Neal whose telephone number is (571) 272-0625. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TJN


ANHTUAN T. NGUYEN
SUPERVISORY PATENT EXAMINER

